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## Comment on Recent Cases

ACT OF GOD: WHAT CONSTITUTES.—In the case of *Newman v. The City of Alhambra*,<sup>1</sup> the chief plea of the defendant was that the damage had been occasioned by an act of God. The plaintiffs owned a lot abutting on one of the defendant city's streets where they had graded to a level higher than the curb. The City of Alhambra later raised the grade of the street twenty-two inches and so altered the method of drainage at the point that when the heavy rains of 1914 came they flooded and injured the plaintiff's property. The Supreme Court refused to admit the defendant's contention that the damage was caused by an act of God, holding that the "owner of property who by unwarranted physical means provides for a change in the drainage of his land so that another must thereby suffer injury may not attribute the logical consequences of his engineering to an act of God."

Mr. Justice Melvin in defining an act of God follows an early California case<sup>2</sup> and quotes from Lord Mansfield who considered an act of God "to mean something in opposition to the act of man; . . . such acts as could not happen by the intervention of man, as storms, lightnings, and tempests."<sup>3</sup>

This definition has probably been the basis of most subsequent decisions on the question. Certainly it has been consistently followed in California. The leading case of *Polack v. Pioche*<sup>4</sup> sets forth the proposition that if any human agency intervenes the accident cannot be termed an act of God. It does not matter whether the human agency is that of the defendant or of others, or even of totally unknown persons. In that case waters of a reservoir were loosed by persons unknown; the defendant had not the slightest part in causing the damage and yet the intervention of the human element prevented his defense on the plea of an act of God.

So where a ditch owner had allowed the ditch partially to fill with sand he cut himself off from a defense that would otherwise have been his when extraordinary spring rains caused it to overflow.<sup>5</sup> And similarly where wheat stored in a warehouse was burned by a fire of incendiary origin.<sup>6</sup>

Nor is any fire an act of God, unless indeed, it be started by lightning. Defective electric wiring, faulty flues, spontaneous combustion—all such causes connote the intervention, either by

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<sup>1</sup> (Sept. 27, 1918), 56 Cal. Dec. 309.

<sup>2</sup> *Polack v. Pioche* (1868), 35 Cal. 416, 95 Am. Dec. 115.

<sup>3</sup> *Forward v. Pittard*, 1 T. R. 27.

<sup>4</sup> *Supra*, n. 2.

<sup>5</sup> *Chidester v. The Consolidated Ditch Co.* (1881), 59 Cal. 197.

<sup>6</sup> *Pope v. Farmers' Union & Milling Co.* (1900), 130 Cal. 139, 62 Pac. 384, 53 L. R. A. 673.

omission or commission, of some human agency and so fall outside the rule.<sup>7</sup>

But even though the accident occur by reason of some entirely extra-human force it is not an act of God if such force is not a "sudden unlooked-for physical event against which no prudence could guard." Thus a ship owner who knew the tide must go out yet moored his vessel so close to the bank that it was penetrated by an unknown submerged object when the stream lowered was held not to be protected by a plea of an act of God.<sup>8</sup> And a rain, even though very heavy, in the last days of October "is not such an extraordinary event as will constitute an act of God."<sup>9</sup> On the same reasoning a high wind, in no way resembling a hurricane, and of fairly frequent occurrence in the region at the time of the year is no act of God.<sup>10</sup> Floods of not unprecedented severity, that have been equaled "many a time before" and high waters of seasonal frequency are also without the definition.<sup>11</sup>

The Civil Code of California defines an Act of God as any "irresistible superhuman cause",<sup>12</sup> and in view of the decisions cited we must understand that the cause must not only be "irresistible" and "superhuman" but also unforeseeable, at least to such an extent that no prevention was possible.

Many courts have made the assertion that an act of God is an "inevitable" or "unavoidable" accident. Such is not an accurate statement, for the two are by no means synonymous. Truly an act of God is always an "inevitable", as well as an "unavoidable" accident, but not all "inevitable or unavoidable" accidents are acts of God. Thus "damage done by lightning is an inevitable accident, and also an act of God, but the collision of two vessels in the dark is an inevitable accident but not an act of God."<sup>13</sup>

There are many concrete examples of what will fall within the limits of a proper definition; most of them are the natural convulsions of nature operating in an extraordinary and unforeseeable manner. The decisions include droughts,<sup>14</sup> earthquakes,<sup>15</sup>

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<sup>7</sup> *Fay v. The Pacific Improvement Co.* (1892), 93 Cal. 253, 26 Pac. 1099, 28 Pac. 943, 27 Am. St. Rep. 198, 16 L. R. A. 188.

<sup>8</sup> *Bohannon v. Hammond* (1871), 42 Cal. 227.

<sup>9</sup> *Remy v. Olds* (1893), 4 Cal. Unrep. 240, 245, 34 Pac. 216.

<sup>10</sup> *Holt Manufacturing Co. v. Thornton* (1902), 136 Cal. 232, 68 Pac. 708.

<sup>11</sup> *Ryan v. Rogers* (1892), 96 Cal. 349, 31 Pac. 244; *Garrett v. Beers* (1916), 97 Kans. 255, 155 Pac. 2, L. R. A. 1916 F, 1289.

<sup>12</sup> §§ 1511, 2194.

<sup>13</sup> *Fergusson v. Brent* (1857), 12 Md. 9, 71 Am. Dec. 583.

<sup>14</sup> *Ward v. Vance* (1880), 93 Pa. St. 499.

<sup>15</sup> *Slater v. S. C. R. Co.* (1888), 29 S. C. 96, 6 S. E. 936.

floods,<sup>16</sup> freezing,<sup>17</sup> lightning,<sup>18</sup> storms,<sup>19</sup> winds,<sup>20</sup> striking an unknown sunken rock in navigating,<sup>21</sup> sudden failure of wind.<sup>22</sup> Death<sup>23</sup> and illness<sup>24</sup> are also held to be acts of God although there is a minority contrary view as to illness.<sup>25</sup> Blight of a potato crop has been held to be within the list in England.<sup>26</sup>

Definitions, and particularly legal definitions, present infinite difficulties. However if we define an act of God as any unpreventable accident occasioned by an irresistible superhuman force alone, we shall not be far wrong. Yet there are cases which do not exactly fit such requirements and yet have properly been held to be acts of God. Thus the case of a jettison at sea in order to save the lives of a ship's crew presents an illustration of an act of God; even though the loss was "accomplished by the immediate agency of man."<sup>27</sup>

But it has been held that a loss occasioned by the closing of schools in consequence of a virulent contagious disease was not due to an act of God.<sup>28</sup> It would seem that it might properly be decided otherwise. It is true the very act of closing the schools came about by human agency but it was the logical consequence of an unpreventable, irresistible, superhuman force and so seems analogous to the case of goods jettisoned at sea.

C. J. S.

CONFLICT OF LAWS: SITUS OF SHARES OF CORPORATE STOCK FOR PURPOSES OF TAXATION.—Shares of stock in private corporations are intangible personal property, in the nature of choses in action.<sup>1</sup> In determining their *situs* for taxation, therefore, they are governed by much the same rules as bonds, mortgages, promissory notes and similar property. There are, of course, obvious differences between these different types, and authority is not unanimous in announcing just what variety of incorporeal personal property stock is. It has been held by some courts to be an

<sup>16</sup> Long v. Pa. R. Co. 147 Pa. St. 343, 23 Atl. 459, 30 Am. St. Rep. 732, 14 L. R. A. 741.

<sup>17</sup> Vail v. Pac. R. (1876), 63 Mo. 230.

<sup>18</sup> Quincy Gas & Elec. Co. v. Schmitt (1906), 123 Ill. A. 647; McCormick v. Pa. R. R. Co. (1880), 80 N. Y. 353.

<sup>19</sup> Black v. Chicago etc. R. Co. (1890), 30 Nebr. 197, 46 N. W. 428.

<sup>20</sup> Blythe v. Denver etc. R. Co. (1891), 15 Colo. 333, 25 Pac. 702, 22 Am. St. Rep. 403, 11 L. R. A. 615.

<sup>21</sup> Williams v. Grant (1816), 1 Conn. 487, 7 Am. Dec. 235.

<sup>22</sup> Colt v. McMechen (1810), 6 Johns. (N. Y.) 160, 5 Am. Dec. 200.

<sup>23</sup> Ringeman v. State (1903), 136 Ala. 131, 34 So. 351.

<sup>24</sup> Dickey v. Linscott (1841), 20 Me. 453, 66 Am. Dec. 66.

<sup>25</sup> Supra, n. 23.

<sup>26</sup> Howell v. Coupland (1874), L. R. 9 Q. B. 462, 466.

<sup>27</sup> Story, Bailments, § 525; Gillett v. Ellis (1850), 11 Ill. 579.

<sup>28</sup> Gear v. Gray (1894), 10 Ind. App. 428, 37 N. E. 1059.

<sup>1</sup> Jellenik v. Huron Copper Mining Co. (1899), 177 U. S. 1, 12, 44 L. Ed. 647, 20 Sup. Ct. Rep. 559; Hutchins v. President etc. State Bank (1847), 12 Met. 421, 426; Webb v. Baltimore & Eastern Shore Ry. Co.